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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

In re D.W., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

D.W.,

Defendant and Appellant.

F058313

(Super. Ct. No. JJD058696)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Tulare County. Valeriano Saucedo, Judge.

Carol L. Foster, under appointment by the Court of Appeal, for Defendant and Appellant.

* Before Dawson, Acting P.J., Hill, J., and Poochigian, J.

Edmund G. Brown, Jr., Attorney General, Michael P. Farrell, Assistant Attorney General, Lloyd G. Carter and Louis M. Vasquez, Deputy Attorneys General, for Plaintiff and Respondent.

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On June 5, 2009, appellant D.W., a minor, admitted an allegation that he violated a condition of probation imposed in a previous wardship proceeding, by failing to obey Tulare County Youth Facility rules, regulations and staff directives. On June 9, 2009, the juvenile court, following a contested jurisdiction hearing, found that appellant committed misdemeanor battery (Pen. Code, § 242).¹ On June 23, 2009, at a disposition hearing covering both the battery adjudication and the probation violation, the court readjudged appellant a ward of the court; ordered that he serve 168 to 365 days in the Tulare County Youth Correctional Center; and declared appellant's maximum period of physical confinement (MPPC) to be four years eight months, based on offenses adjudicated in multiple wardship proceedings.

On appeal, appellant's sole contention is that the juvenile court erred in calculating appellant's MPPC. The People concede the point. We will modify the judgment to reduce the MPPC by two months, and otherwise affirm.

DISCUSSION

Welfare and Institutions Code section 726, subdivision (c), provides that when the juvenile court orders a minor removed from the custody of his or her parents or guardian, the juvenile court must specify that the minor "may not be held in physical confinement" longer than the "maximum term of imprisonment which could be imposed upon an adult convicted of the offense or offenses which brought or continued the minor under the jurisdiction of the juvenile court." (*Ibid.*) Where the court elects to aggregate

¹ Except as otherwise indicated, all statutory references are to the Penal Code.

confinement periods on multiple offenses, including offenses adjudicated in previous wardship proceedings, the MPPC under Welfare and Institutions Code section 726 “must be specified in accordance with the formula set forth in subdivision (a) of Penal Code section 1170.1, i.e., the sum of the ‘principal term’ (the longest term imposed for any of the offenses) and ‘subordinate terms’ (one-third of the middle term imposed for each other offense),” with the exception that where, as here, at least one of the offenses is a misdemeanor, subordinate misdemeanor terms are calculated as one-third of the maximum term for such offenses. (*In re Eric J.* (1979) 25 Cal.3d 522, 536, 537, fn. omitted.)

The court calculated appellant’s MPPC of four years eight months as follows: four years for a 2004 violation of section 245, subdivision (a)(1); four months for a 2005 violation of section 314, subdivision 1 (section 314(1)); two months for a 2007 violation of section 243, subdivision (a); and two months on the instant section 242 violation.

As the parties agree, the portion of the MPPC corresponding to appellant’s 2005 adjudication of indecent exposure in violation of section 314(1) was in error. That offense is a misdemeanor, punishable by a maximum term of six months pursuant to section 19,² unless the perpetrator commits the offense after the nonconsensual entry into an inhabited dwelling, a trailer coach as defined in Vehicle Code section 635 or “the inhabited portion of any other building.” (§ 314, subds. 1 & 2.) Appellant committed the offense at the home of his uncle, who was babysitting appellant while appellant’s mother was out of town. Thus, the portion of the MPPC attributable to the section 314(1) violation should have been two months, representing one-third of the six-month

² Section 19 provides, in relevant part: “Except in cases where a different punishment is prescribed by any law of this state, every offense declared do be a misdemeanor is punishable by imprisonment in the county jail not exceeding six months”

maximum. (*In re Eric J.*, *supra*, 25 Cal.3d at pp. 536-538.) As indicated above, the court imposed a term of four months on that offense. We will reduce the MPPC accordingly.

DISPOSITION

The maximum period of physical confinement of four years eight months declared by the court is reduced to four years six months. As modified, the judgment is affirmed.